

Application No. 09/551,256  
Amendment dated August 25, 2003  
Amendment under 37 CFR 1.116 Expedited Procedure  
Examining Group 2877

PATENT

REMARKS/ARGUMENTS

Status of Application

Claims 1 and 3-31 are pending. Applicants gratefully acknowledge the allowance of claims 1, 4, 5, 8-12, 14-29 (including independent claims 1, 8, 10, 17, 18, 28). Claims 3, 6, 7, 13, 30, and 31 (including independent claims 3, 6, and 30) stand finally rejected as obvious over U.S. Patent No. 6,404,492 to Xu et al. (Xu) in view of U.S. Patent No. 5,796,479 to Derickson et al. (Derickson).

Applicants have amended claim 3 and respectfully request reconsideration of the rejection of claims 6, 7, 13, 30, and 31.

This Amendment After Final Should be Entered

Applicants recognize that the Examiner has discretion in entering an amendment after final rejection, and believe that the present amendment is sufficiently focused to be appropriate for entry. The amendment to claim 3 addresses the newly cited prior art, and Applicants believe that the arguments with respect to the other claims will address the newly cited prior art. This amendment is not believed to require additional search or raise new issues.

Could this amendment have been made earlier? Applicants believe not. The previous amendment is believed to have been fully responsive to the rejection, and it is believed that the Examiner, by citing new art, set the stage for Applicants to respond directly to the Examiner's concerns. Entry is respectfully requested.

The Rejected Claims Distinguish Over the Cited Prior Art

Applicants previously argued that Xu, which discloses a tunable light source suitable for spectroscopy applications and the like, did not anticipate or render claims 3, 6, and 30 obvious after amendment to limit the quality characteristic to one or more of signal-to-noise ratio, bit error rate, and optical wavelength center frequency (claims 3 and 6 also recite specific bytes in SONET frames). The Examiner has now combined Xu with Derickson, which discloses simultaneous monitoring of quality characteristics of a plurality of wavelengths in a WDM telecommunications system.

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Applicants respectfully submit that Derickson actually teaches away from the present invention, and that the combination with Xu could only occur on the basis of hindsight reconstruction. In short Derickson discloses monitoring the wavelength channels simultaneously; for example, column 1, lines 48-59 read as follows:

In accordance with the preferred embodiment of the present invention, a detector array spectrometer provides efficient use of detectors to simultaneously monitor wavelength, power, and signal-to-noise ratio of WDM channels in optical telecommunication networks. The detector array spectrometer incorporates an angled diffraction grating to achieve compact size, while spatially separating component signals from each of the WDM channels according to the channels' wavelengths. The component signals provided by the diffraction grating are incident on an array of split-detectors that conforms to the spatial separation of the component signals.

This is at odds with the present invention where different wavelength channels are directed to the same detector during different time intervals.

Applicants have amended claim 3 to clarify this distinction. In particular, claim 3 has been amended so that pertinent portions read as follows:

during each of a plurality of successive time intervals  
corresponding to the plurality of spectral bands,  
separating each a different corresponding spectral band of  
the plurality of spectral bands from the plurality of spectral bands,  
directing the separated spectral band to the photodetector  
while preventing the spectral bands other than the separated spectral band  
from reaching the photodetector, ... (Claim 3, markings from current  
amendment).

Independent claims 6 and 30 are believed to recite this distinction without further amendment. The pertinent portions of claim 6 read as follows:

a control circuit coupled to said routing mechanism to cause only a first selected spectral band to be directed to said photodetector during a first time interval and to cause only a second selected spectral band to be directed to said photodetector during a second time interval, whereby said electrical circuit provides, during said first and second intervals, respective first and second signals representing the quality characteristic for the first and second selected spectral bands. (Emphasis added)

The pertinent portions of claim 30 read as follows:

during a first time interval,

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directing the first spectral band to a photodetector while preventing  
the spectral bands in the plurality of spectral bands other than the first spectral  
band from reaching the photodetector, and  
generating, ...; and  
thereafter, during a second time interval,

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directing the second spectral band to the photodetector while  
preventing spectral bands in the plurality of spectral bands other than the second  
spectral band from reaching the photodetector, ... (Claim 30, emphasis added),  
and

Therefore, it is respectfully submitted that independent claims 3, 6, and 30 would  
not have been obvious over Xu and Derickson.

Dependent claims 7, 13, and 31 depend from claims 6 and 30, which are believed  
allowable, and are therefore allowable for that reason alone. Furthermore, dependent claims 7  
and 31 recite the notion of generating a signal representing the optical power of the bands other  
than the band that is directed to the photodetector (selected band). This feature, especially in  
combination with the other recited features, is nowhere suggested in the prior art.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this  
Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of  
this application, please telephone the undersigned at 650-326-2400.

**FAX RECEIVED**

Respectfully submitted,

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